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SUBJECT: 2007 IPR Wrap-up: Overall Progress, Some Trouble Spots

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Summary

¶1. (SBU) Taiwan had mixed results combating IPR violations and strengthening its IPR regime in 2007. A new law aimed at ending illegal file-sharing over peer-to-peer (P2P) platforms helped officials shut down some of the worst violators, authorities increased efforts to combat counterfeit pharmaceuticals, and the Ministry of Education (MOE) worked to reduce IPR violations on Taiwan's college campuses. Digital piracy of music, movies, and software, however, continues to be a major problem, made worse by the authorities' failure to send to the Legislative Yuan (LY) an amendment to the Copyright Law that would limit an Internet service provider's (ISP) liability if the ISP quickly removed IPR-infringing material. Rights-holders also criticized Taiwan Customs for not doing enough to prevent counterfeit drugs, CDs, and DVDs from entering Taiwan by mail. In 2008, we continue to encourage Taiwan to demonstrate continued commitment to IPR enforcement by passing the long-awaited ISP amendment and reducing digital piracy on university campuses. End summary.

P2P Law Getting Results

¶2. (SBU) In June 2007, Taiwan passed legislation providing a legal basis for prosecuting online peer-to-peer platforms whose service allows for the exchange of IPR-infringing materials. In September 2007, law enforcement agencies worked with the International Federation of the Phonographic Industry (IFPI) to raid and then shut down the two largest P2P service providers in Taiwan: Kupeer and Hip2p (Ref A). Most Taiwan colleges have also begun to enforce maximum daily download limits in order to restrict student use of P2P platforms on school computers, though administrators tell econoff that they are reluctant to completely ban the use of P2P software due to cases where students have a legitimate need (Ref B).

ISP Amendment Still Pending

¶3. (SBU) In 2007, the Taiwan Intellectual Property Office (TIPO) proposed an amendment to the Copyright Law that would limit an ISP's liability if the provider quickly removed IPR-infringing material. TIPO ensured that the United States--along with ISPs and rights-holder groups such as IFPI, BSA, and MPA--had opportunities to comment on the draft law, and the final version incorporated many U.S. suggestions. However, the 2007 LY session ended before the amendment could pass a third reading and become law. TIPO plans to

re-introduce the proposed amendment during 2008's LY session.

Plan to Ease Compulsory Licensing Dropped

¶4. (SBU) Responding in part to U.S. concerns, Taiwan has halted an effort to expand the use of compulsory licensing, a practice whereby one company can request that the authorities force a rights-holder to grant the company a license for its patented product, often at a below-market rate. In October, the LY suspended debate on a proposed amendment to Article 76 of the Patent Act that would have allowed Taiwan authorities a broader use of compulsory licensing for pharmaceuticals and other patented products for domestic use and export (Ref C). Margaret Chen, TIPO's Secretary General, told econoff on January 2 that TIPO does not support such an amendment, and since the bill's sponsor in the LY will not be re-elected, the language he proposed this session to give the Taiwan authorities a broad mandate to grant compulsory licenses is less likely find its way into any subsequent versions of a Patent Act amendment.

¶5. (SBU) In a separate positive development, in a widely-watched test case on the use of compulsory licenses in Taiwan, the Dutch company Philips reached a financial settlement with the Taiwan company Gigastorage for the company's past production of CD-Rs and CD-RWs under such a license (Ref C). In May 2007, after the EU initiated a Trade Barriers Regulation (TBR) investigation of the case, Gigastorage requested that TIPO nullify its original license approval, and the company stopped production of CD-Rs and CD-RWs in Taiwan in September 2007. Philips Taiwan would not reveal the size of the settlement to AIT, but told us that it is a "substantial sum" to be paid in stages, though Philips raised the possibility that Gigastorage may evade payments after the first installment.

¶6. (SBU) Although the compulsory license has been withdrawn, Philips

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has appealed Taiwan's original decision to issue a compulsory license to Gigastorage, and expects that the Taipei High Administrative Court will hand down its ruling on this case in the first half of 2008. Philips is continuing its appeal because the company wants legal vindication that the original decision to grant a compulsory license was wrong (Ref C).

Physical Music and Movie Piracy Down...

¶7. (SBU) According to IFPI, which represents the international recording industry in Taiwan, as legitimate CD sales in Taiwan have dropped by half since 2004, the percentage of pirated copies has fallen from 36 percent of all copies sold to 22 percent (Ref A). IFPI estimates that the number for physical outlets for pirated CDs has also fallen to only 30 stores around Taiwan, versus 250 a decade ago. According to police records, there were 227 music-related physical piracy cases in Taiwan in 2006 and only about 150 in 2007.

¶8. (SBU) Spencer Yang, the head of the Taiwan Federation Against Copyright Theft (TFACT, formerly known as the Motion Picture Association - Taiwan), recently told econoff that, although TFACT did not have enough money to do a piracy survey this year, they believe that Taiwan's physical piracy rate for DVDs has continued to decline as the IP Police have gradually shut down most of the island's illegal DVD "factories." According to Yang, most domestic counterfeiting is now individuals burning counterfeit DVDs on home computers. Yang said that the majority of fake DVDs now come from PRC and other overseas mail-order sites that take orders over the Internet and deliver physical copies by mail.

...Overall Digital Piracy Up

¶9. (SBU) Digital piracy of music and movies, however, continues to grow and is now number one on both TFACT's and IFPI's list of concerns. IFPI's Lee could not estimate the overall rate for Internet music piracy, but recently noted to econoff that the police prosecuted 165 music-related digital cases in 2006, but had already

reached 200 as of August 2007, and that raids on unauthorized sites doubled in 2007. In 2006 and 2007, IFPI members sent more than 2500 "Cease and Desist" letters asking major Internet service providers (ISPs) and auction sites to remove or take down unauthorized music content, with an 80 percent success rate in having the ISP remove the offending content.

¶110. (SBU) TFACT's Yang believes that the Internet movie piracy rate is lower than that for music downloads, but that the movie downloading problem will worsen as broadband Internet service becomes cheaper and more widely available. Yang also told econoff that Taiwan's judiciary does not take the digital piracy problem seriously enough, and complained that judges give light sentences to operators of P2P platforms and other websites that offer free movie downloads for profit or to attract visitor traffic, despite the fact that Internet violators have the potential to reach even more customers than traditional underground DVD factories. Yang also said that Taiwan's judicial process is very slow, citing TFACT's case against the Ezpeer P2P site that has dragged on since 2005. TFACT also has two other cases that it raised with the courts in November 2006 and are still under investigation by the prosecutor's office.

Software Piracy Worse Than We Think?

¶111. (SBU) Digital piracy is not restricted to just music and movies. According to surveys done by the Business Software Alliance (BSA), 41 percent of member-company software used in Taiwan is unauthorized. The true picture of software piracy is likely worse, however. During a December 27 meeting, BSA's Taiwan office head told econoff that BSA's worldwide survey methodology undercounts the true level of unauthorized use by at least 10 percentage points in Taiwan. According to BSA Taiwan, unauthorized use of member software--including illegal copies, expired licenses, and under-reporting of licensed users--is common not only in the business community, but also on university campuses and within official agencies.

¶112. (SBU) Ronald Patston, Vice President of Asia Pacific Operations for Applied Wave Research, which sells computer-aided design software for the production of electronics, recently told econoff that roughly 70 percent of Applied's software use in Taiwan is unauthorized. Patston believes that the piracy rate for his company--which is not a member of BSA--likely reflects the true

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overall rate of software piracy in Taiwan.

Good Progress Against Counterfeit Drugs

¶113. (SBU) Don Shruhan, the Singapore-based director of Pfizer's regional anti-counterfeiting office, praised Taiwan's efforts over the past year against counterfeit pharmaceuticals. Shruhan recently told econoff that in the quality of its police investigations, number of prosecutions, and severity of judicial sentences, Taiwan has become not just better than regional competitors such as Malaysia and Korea, but comparable to more advanced countries such as Japan and New Zealand. As a result, Shruhan said, recent island-wide test buys of the often-counterfeited Pfizer drug Viagra found that only 18 percent of Viagra sold by Taiwan pharmacies was fake, down from an astounding 60 percent in 2006. The International Research-based Pharmaceutical Manufacturers' Association (IRPMA), the original-drug manufacturers' industry group in Taiwan, remains concerned about counterfeit drugs, but in its 2008 Policy Priority Paper, IRPMA ranks the issue far below other IPR issues such as patent linkage and data exclusivity.

Customs: The Weakest Link

¶114. (SBU) Pfizer's Shruhan told econoff that Customs is the weakest link in Taiwan's relatively good efforts against pharmaceutical piracy. According to Shruhan, the most popular way to smuggle counterfeit drugs into Taiwan is by mail-order from Thailand or

China, and he said that Customs is not willing to spend time seizing smaller quantities of counterfeits or doing follow-up investigations. In addition, Customs has refused repeated offers of free training from Pfizer to help Customs identify counterfeit drugs, and, according to Shruhan, does not seem interested in improving their anti-counterfeiting efforts.

¶115. (SBU) TFACT's Yang echoed Pfizer's complaints, telling econoff recently that although most fake CDs and DVDs now come into Taiwan by air parcel in packs of five or less, Customs officers have little interest in intercepting such packages. He attributes this to Customs Officers wanting to avoid the large amount of paper work required for even relatively small seizures, as well as a lack of manpower dedicated to follow-up investigations. Every year, TFACT holds four training sessions for Customs--once each in Taipei, Keelung, Taichung, and Kaohsiung--in how to identify fake CDs and DVDs, but Customs still allows small packages of fakes to drip into Taiwan daily.

IP Court To Open in July 2008

¶116. (SBU) The long-awaited specialized IP Court is still just that: long-awaited. We expect the court, originally scheduled to open in March 2007, will start hearing cases in July 2008. BSA and other rights-holder groups, while encouraged by the court's establishment, are pessimistic that the IP Court will be able to improve IPR-related prosecutions since it will only have about 10 specialized IP judges and the same number of prosecutors. Currently, the Taipei District Court alone has 12 judges who hear IP cases as part of their normal caseload. TFACT's Yang told econoff that, in addition to being too few, the IP Court's judges will not have adequate training needed to improve the handling and speed of IP cases.

Campus Action Plan Sparks Some Progress

¶117. (SBU) In 2007, the Taiwan Ministry of Education (MOE) made reducing campus intellectual property rights (IPR) violations a priority, and their efforts are creating some positive results. Although the Campus IP Action Plan that the MOE released end-October was watered-down by university complaints, many schools have stepped up enforcement efforts in response to the Plan's incentives. Textbook copying and other physical piracy appear to have continued their decade-long decline due to heightened enforcement and increased understanding of Taiwan's IPR laws by students and copy shop employees (Ref B). Digital piracy on Taiwan's university campuses, however, is increasing, and software companies complain that the MOE and universities are not doing enough to combat unauthorized software use on campuses, and also that the MOE has not held promised meetings with rights-holder groups.

Comment

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¶118. (SBU) Although Taiwan authorities did not open the long-awaited IP Court and failed to send an Internet service provider (ISP) law to the LY in 2007, Taiwan stepped up enforcement against illegal P2P file-sharing, counterfeit pharmaceuticals, and textbook copying and illegal music downloads on college campuses. Trouble spots remain--including less-than-effective customs enforcement as well as digital music, movie, and software piracy--and we will press Taiwan over the coming year to pass the long-awaited ISP amendment and keep pressure on universities to get digital piracy under control. End comment.